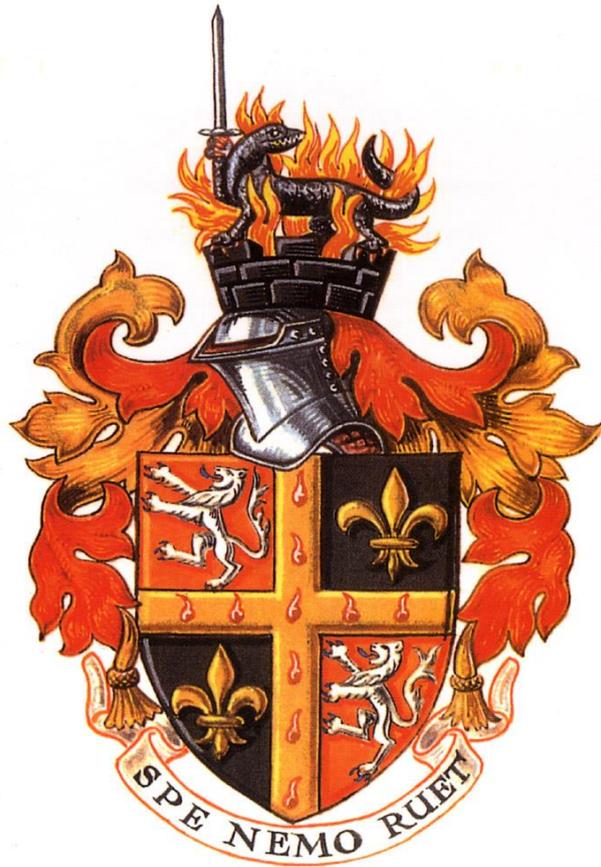


# SPENNYMOOR TOWN COUNCIL



## DISCLOSURE AND BARRING SERVICES POLICY (PROTECTING VULNERABLE PEOPLE)

<b>Author of Policy:</b>	Town Clerk
<b>Date Effective From:</b>	24 November 2020
<b>Policy Review: When &amp; By Whom</b>	21 October 2020 Constitution Working Group
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In accordance with the Freedom of Information Act 2000, this document will be posted on the Council's Website [www.spennymoor-tc.gov.uk](http://www.spennymoor-tc.gov.uk) and copies of this document will be available for inspection on deposit in the Council Offices, Town Hall, Spennymoor. Costs are as per the model publication scheme.

# 1. Introduction

- 1.1 This policy statement provides guidance on the effective use of the Disclosure and Barring Services (DBS) process to safeguard the children and adults who access our services.
- 1.2 Spennymoor Town Council is committed to safeguarding the welfare of those accessing its services through the effective use of the DBS Disclosure vetting process for all relevant groups of employees.
- 1.3 Throughout this document where a “DBS Disclosure or check” is referred to, this covers all types of DBS check (i.e. standard/enhanced/enhanced + children’s and /or adults barred list check).
- 1.4 Where the term ‘vulnerable adult’ is used, this is where an adult is in receipt of or accessing a service which leads that adult to being considered vulnerable at that particular time.

# 2. Purpose

- 2.1 This policy sets out the approach to criminal background checks within the Council.

# 3. Scope and Principals

- 3.1 The Council promotes equality of opportunity for all and recognises the importance of employment in the rehabilitation of ex-offenders. As an organisation using the Disclosure and Barring Service (DBS) which was formerly the Criminal Records Bureau (CRB) service to assess applicants’ suitability for positions of trust, the Council complies fully with the DBS Code of Practice.
- 3.2 After a certain length of time some sentences are considered spent and must be disregarded. Unless the nature of the work means that a role is exempt, applicants are not asked to disclose convictions which are spent under the Rehabilitation of Offenders Act 1974.

- 3.3 Having an unspent conviction will not necessarily bar applicants from employment. Criminal records should be taken into account for recruitment purposes only when a conviction is relevant.
- 3.4 For applicants who are offered employment in certain posts, including those where regulated activity is undertaken, a criminal record check from the DBS will be undertaken.
- 3.5 The principles in this policy apply to both paid and volunteer positions.
- 3.6 DBS checks on people employed to work with children and vulnerable adults are allowed as an exemption to the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in 2013). Under the Act individuals are not required to disclose any 'spent' convictions, unless the exemption applies. The Protection of Freedoms Act 2012 (PoFA) introduced limits on the eligibility of certain types of employment for DBS checks.
- 3.7 Filtering Rules came into force from 29th May 2013. From that date certain old and minor convictions, cautions, reprimands and warnings do not have to be disclosed by the applicant and will not appear on the DBS check. The Filtering Rules can be found on the Gov.UK website. Some offences will never be removed from a DBS Certificate. These include the most serious sexual and violent offences.
- 3.8 Spennymoor Town Council complies fully with the DBS Code of Practice and undertakes to treat all applicants fairly and not to discriminate unfairly against anyone on the basis of conviction or other information revealed. Having a criminal record will not necessarily prevent an individual from being employed by Spennymoor Town Council. This will depend on the nature of the role, professional suitability and the circumstances, nature and background of the offences.
- 3.9 The Council recognises that access to criminal record information has to strike a balance between the rights of children and the vulnerable in society, an individual's right to privacy, and the rights of ex-offenders to become rehabilitated into society. It is essential that confidential and sensitive information about an individual's criminal record is handled fairly and properly.

## 4. Types of criminal record check

### Standard Check

- 4.1 The standard check is available for duties, positions and licences included in the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975 (as amended in 2013), for example, court officers, employment within a prison, and Security Industry Authority (SIA) licences.
- 4.2 A standard level certificate contains details of all spent and unspent convictions, cautions, reprimands and final warnings from the Police National Computer (PNC) which have not been filtered in line with legislation.

### Enhanced Check

- 4.3 The enhanced check is available for specific duties, positions and licences included in both the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 and the Police Act 1997 (Criminal Records) regulations, for example, regularly caring for, training, supervising or being solely in charge of children, specified activities with adults in receipt of health care or social care services and applicants for gaming and lottery licences.
- 4.4 An enhanced level certificate contains the same PNC information as the standard level certificate but also includes a check of information held locally by police forces.

### Enhanced with a Barred List Check

- 4.5 The enhanced check with barred list check(s) is only available for those individuals who are carrying out regulated activity and a small number of positions listed in Police Act 1997 (Criminal Records) regulations, for example, prospective adoptive parents and taxi and Private Hire Vehicle (PHV) licences.
- 4.6 An enhanced level certificate with barred list check(s) contains the same PNC information and check of information held locally by police forces as an enhanced level check but in addition will check against the Children's and Adults' Barred Lists

- 4.7 If your application includes a request to check the barred list(s) the DBS has a statutory duty to consider any information that suggests an individual may pose a risk of harm. We will write to you if you are affected.

## 5. Cost of Disclosure

- 5.1 The cost of checks relating to appointments to Council posts should be met by the Council.
- 5.2 The cost of checks undertaken by the Council on behalf of contractors and those from whom the Council commissions a service should be met by the contractor depending on the particular circumstances and terms of the contract.
- 5.3 Checks for volunteers are free. A volunteer is currently defined by the DBS as a person who performs an activity which involves spending time, unpaid (except for travelling and other approved out-of-pocket expenses), doing something which aims to benefit someone (individuals or groups) other than or in addition to close relatives.

## 6. Definition of Regulated Activity - Children

- 6.1 The definition of regulated activity relating to children is shown at Appendix 1

## 7. Who should be subject to a DBS check?

- 7.1 DBS checks will only be sought for people who will undertake regulated activity, as defined in Appendix 1. This includes roles such as Pre-School Staff.
- 7.2 DBS check applications will not be made for the following individuals who would previously have been subject to Enhanced DBS checks, but who are now not covered by the definition of regulated activity;
- employees who use databases containing information on children
  - volunteers who are supervised whilst undertaking what would otherwise be defined as regulated activity
- 7.3 Checking references and gaps in employment is therefore of paramount importance in the recruitment process for these individuals.

- 7.4 In exceptional cases, where a risk assessment made on one of the roles identified in 7.2 above, raises a cause for concern, the manager may request that the Town Clerk agree to authorise a DBS check. This is lawful under the PoFA. However, in these circumstances the DBS check will not include a check against the Barred List because the individual is not engaged in regulated activity.

## 8. DBS Application Procedure

- 8.1 Applications for DBS checks are currently made through the North East Regional Employers Organisation.
- 8.2. The DBS will send a Disclosure Certificate to the applicant on whom the check was carried out.
- 8.3. The Town Clerk will check the disclosure website which will either state:
- The check is complete with 'no content'; which means that the check is clear, or
  - The check is complete 'with content, please wait to view applicant certificate' which means that the check is not clear.
- 8.4 If the check is clear the Manager can arrange a start date and ask the applicant to bring the check with them on their first day of employment.
- 8.5 If the certificate has 'content' the applicant must be asked to bring the certificate in to show the Town Clerk as soon as possible so that a risk assessment can be completed. A copy of the risk assessment should be kept permanently on the employee's file in a sealed envelope.
- 8.6 **In all cases** the Town Clerk must see an original copy of the DBS check certificate. Managers WILL NOT print copies of the certificate.

## 9. Roles and Responsibilities

- 9.1 **DBS applicants** are responsible for:
- Declaring if they have spent or unspent convictions (including driving offences), cautions, warnings or reprimands that are not covered by the filtering rules. This will normally be requested on the application form.

- Completing the online DBS form fully and accurately, in accordance with the DBS applicants' guide.
- Ensuring that they have sufficient original identification documents as set out in the DBS applicants' guide

9.2 The **Corporate & Policy Officer** is responsible for:

- Identifying if the role requires a DBS check.
- Ensuring that all identification documents presented by the applicant are original, appropriate and relevant and verifying this on the on-line system (A list of identification documents can be found in the DBS applicants' guide.)
- Ensuring appropriate storage and disposal of DBS documentation as specified below.
- Ensuring that every employee appointed to a post which requires a DBS disclosure has completed and submitted a DBS disclosure on-line prior to appointment.

9.3 The **Manager** is responsible for:

- Ensuring that no employee commences work without a DBS disclosure being received, where required.
- Ensuring that all other recommended pre-employment checks have been carried out satisfactorily prior to appointment.
- In conjunction with the Town Clerk, making a decision about employment when a positive DBS disclosure is returned, using a risk assessment approach as necessary.
- Making a written account of the decision and reasons for it on the Positive Disclosure Decision Sheet, to be retained in a sealed envelope in the employee's personal file.

9.4 The **Town Clerk** is responsible for;

- Advising managers on decisions about employment on positive DBS disclosures.

- Advising managers on the risk assessment process in making decisions about positive disclosures where there are child protection issues
- Signing off the decision sheet for positive DBS disclosures

## 10. Which employees can start without a DBS check having been received?

10.1 Under normal circumstances no employee who is due to work in a job that requires a DBS check may start employment before a DBS disclosure has been received. On- line processing of DBS checks has removed excessive delays in receiving clearance, so there should be no reason to start employment before receiving clearance. However, in some case where there is a delay, following a risk assessment, the Town Clerk can approve that the individual commences work prior to the receipt of the Certificate provided that the individual will not be working in an unsupervised capacity.

10.2 Where a volunteer is transferring to paid employment within the same service area, a new DBS check will not be required provided:

- the individual has been engaged in active volunteering for the service within the last three months and a DBS check was undertaken at the point of engagement
- the new post requires a DBS check at the same level
- the new post does not involve responsibilities not previously checked

10.3 Where there is a break in service/engagement of 3 months or more, then a new DBS check must be applied for.

## 11. Overseas applicants and applicants who have lived abroad

11.1 The DBS can only check applicants from the date they arrive in the UK, or for the time the applicant has lived in the UK. The DBS cannot currently access overseas criminal records or other relevant information as part of its disclosure service.

- 11.2 If the Council recruits an individual from overseas, or an individual who has lived abroad in recent years prior to appointment, and needs to check their overseas criminal record, a DBS check may not provide a complete picture of the criminal record, which may or may not exist.
- 11.3 A DBS check must be undertaken in the usual way. In addition, the applicant must contact the relevant Embassy to obtain a disclosure which should not be dated more than 6 months ago at the time of receipt. This disclosure must be sent to the Town Clerk before full clearance to work is issued. The Town Council reserves the right to seek verification of the documents provided.

## 12. Re-checking DBS

- 12.1 The Town Council has taken a policy decision which means that those employees working in any areas with children are required to undertake a new DBS Disclosure every 3 years:
- 12.2 The DBS Disclosures for these groups of employees will be monitored and the Town Clerk will initiate the process as and when required.
- 12.3 Where an existing worker's DBS Disclosure reveals a criminal background or any cause for concern (i.e. it is a Positive DBS Disclosure) the Town Clerk will contact the manager to discuss and advise on the issues.
- 12.4 In addition, a new DBS disclosure will be applied for where an individual moves to a new position within the organisation that:
- requires a check at a higher level; or,
  - involves responsibilities not previously checked.

## 13. Dealing with Positive Disclosures

- 13.1 A positive disclosure is a certificate that shows cautions, warnings or convictions. They may show spent convictions and also unspent convictions, and for Enhanced checks, they will also show information that a police force deems relevant to disclose based on the nature of the job that the individual will be employed to do.

13.2 A summary of the action to be taken following receipt of notification of a DBS disclosure is set out below;

Disclosure with "No Content"	Disclosure with "Content"	Applicant is barred from working with children and/or vulnerable adults
<p>Appointment proceeds subject to all other pre-employment checks.</p> <p>Applicant required to bring in certificate on first day of employment.</p>	<ul style="list-style-type: none"> <li>• Applicant asked to bring certificate in to show the Town Clerk as soon as possible. No start date is arranged.</li> <li>• The Town Clerk should contact a HR advisor to seek advice on the implications of the information revealed.</li> <li>• Manager completes Positive Disclosure Decision Sheet after discussion with the Town Clerk.</li> <li>• The Town Clerk must be involved in this decision if there is a child protection issue.</li> </ul>	<p>Offer of employment is void.</p> <p>Appointment is unlawful and must not proceed.</p>

13.3 Before a decision is reached on whether to offer or confirm employment to an individual, the individual will be offered the opportunity to discuss the content of the disclosure with the Town Clerk. The Town Clerk will make a balanced decision on whether they are satisfied to employ the person/service provider, based on:

- whether they are barred from appointment under the DBS lists;
- whether the conviction is relevant to the position;
- the circumstances surrounding the offence, and any explanations provided by the applicant;
- the seriousness of the offence;
- the length of time since the offence occurred;
- whether there is a pattern to the offending behaviour, or whether it was a one-off; and,
- whether the applicant's circumstances have changed.

13.4 Further discussion should take place regarding:

- whether the applicant disclosed the conviction(s) / cautions, warnings or reprimands at application or at interview stage;
- what level of supervision will the post-holder receive;
- does the post involve responsibility for finance or items of value; and,

- will the nature of the role allow the applicant to potentially re-offend.
- 13.5 The Town Clerk will make the overall decision about whether to employ or not employ the person.
- 13.6 The decision and the reasons for it will be recorded on a Positive Disclosure Decision Sheet, signed by the line manager and the Town Clerk where necessary, and be stored on the person's file in a sealed envelope.
- 13.7 If an applicant has made a false declaration on the application form, or anywhere else, about convictions and cautions (or lack of them), this may render the offer of a contract of employment void.

## **14. DBS Disclosures for agency workers/ contractors/sub-contractors/volunteers**

- 14.1 Agency workers, contractors, sub-contractors and volunteers must be assessed against the same criteria as those working directly for the Town Council to see if a DBS Disclosure is required (please refer to Appendix 1).
- 14.2 It is the responsibility of the relevant Manager to put appropriate measures in place to validate and ensure contract compliance.

# Appendix 1

## REGULATED ACTIVITY RELATED TO CHILDREN

### What is the definition of young people/ children?

A person who is under the age of 18.

### What is regulated activity in relation to children?

Regulated activity relating to children is defined as work that a barred person must not do. It is as follows:

#### Category 1:

- Teaching, training, instructing, caring for or supervising children in an unsupervised capacity;
- Providing advice/guidance on well-being to children in an unsupervised capacity;
- Driving a vehicle for children only in an unsupervised capacity;
- Work for a limited range of establishments (specified places) with opportunity for contact.
- It is work that is done on a 'regular' basis i.e. one or more times a week or on 4 or more days in a 30-day period.

#### Category 2:

- Relevant personal care e.g. washing or dressing a child; or healthcare by or supervised by a professional, even if done only once
- Registered child-minding
- Foster carers.

A DBS check is not required in respect of the activities in categories 1 and 2 if the person undertaking these activities:

- is supervised at a reasonable level (refer to guidance on supervision);
- is providing treatment or therapy (instead of 'health care');
- Is a supervised volunteer – supervised at a reasonable level;
- Is carrying out occasional or temporary services e.g. window cleaners; of,
- Is an office holder e.g. governor.

General exceptions:

Regulated activity relating to children does not include:

- Family arrangements, and personal, non-commercial arrangements.
- Activity by a person in a group assisting or acting on behalf of, or under direction of, another person engaging in regulated activity in relation to children.